

**Introduced by Senator Kuehl**

February 23, 2007

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An act to amend Sections 2708, 3300, 3301, 3302, 3303, and 3303.1 of the Unemployment Insurance Code, relating to family temporary disability insurance, and making an appropriation therefor.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 727, as introduced, Kuehl. Unemployment and disability compensation benefits: family temporary disability insurance: grandparents, grandchildren, and siblings.

Under existing law, the family temporary disability insurance (FTDI) program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill family member, as defined, or to bond with a new child. These benefits are payable for family temporary disability leaves that begin on and after July 1, 2004.

This bill would expand the scope of the family temporary disability insurance program to include grandparents, grandchildren, parents-in-law, and siblings within the definition of "family member," and would make conforming and clarifying changes in provisions relating to family temporary disability compensation. This bill would also clarify that an individual, who is entitled to a leave under the FMLA and the CFRA, must take the FTDI leave concurrent with the leave taken under the FMLA and CFRA if the FTDI leave is a qualifying leave under the FMLA or CFRA.

By increasing the pool of potential recipients of payments from the Disability Fund, a continuously appropriated special fund, this bill would result in an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

1 (1) A diagnosis and diagnostic code prescribed in the  
2 International Classification of Diseases, or, where no diagnosis  
3 has yet been obtained, a detailed statement of symptoms.

4 (2) The date, if known, on which the condition commenced.

5 (3) The probable duration of the condition.

6 (4) An estimate of the amount of time that the physician or  
7 practitioner believes the employee is needed to care for the child,  
8 parent, *grandparent*, *grandchild*, *sibling*, spouse, or domestic  
9 partner.

10 (5) (A) A statement that the serious health condition warrants  
11 the participation of the employee to provide care for his or her  
12 child, parent, *grandparent*, *grandchild*, *sibling*, spouse, or domestic  
13 partner.

14 (B) “Warrants the participation of the employee” includes, but  
15 is not limited to, providing psychological comfort, and arranging  
16 “third party” care for the child, parent, *grandparent*, *grandchild*,  
17 *sibling*, spouse, or domestic partner, as well as directly providing,  
18 or participating in, the medical care.

19 (c) The department shall develop a certification form for bonding  
20 that is separate and distinct from the certificate required in  
21 subdivision (a) for an employee taking leave to bond with a minor  
22 child within the first year of the child’s birth or placement in  
23 connection with foster care or adoption.

24 (d) The first and any continuing claim of an individual who  
25 obtains care and treatment outside this state shall be supported by  
26 a certificate of a treating physician or practitioner duly licensed  
27 or certified by the state or foreign country in which the claimant  
28 is receiving the care and treatment. If a physician or practitioner  
29 licensed by and practicing in a foreign country is under  
30 investigation by the department for filing false claims and the  
31 department does not have legal remedies to conduct a criminal  
32 investigation or prosecution in that country, the department may  
33 suspend the processing of all further certifications until the  
34 physician or practitioner fully cooperates, and continues to  
35 cooperate with the investigation. A physician or practitioner  
36 licensed by and practicing in a foreign country who has been  
37 convicted of filing false claims with the department may not file  
38 a certificate in support of a claim for disability benefits for a period  
39 of five years.

40 (e) For purposes of this part:

(1) “Physician” has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) “Practitioner” means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

(f) For a claimant who is hospitalized in, or under the authority of, a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant’s hospital chart, and the certificate is signed by the hospital’s registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant’s hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant’s disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

SEC. 2. Section 3300 of the Unemployment Insurance Code is amended to read:

3300. The Legislature finds and declares all of the following:

(a) It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance

1 benefits has intensified as the participation of both parents in the  
2 workforce has increased, and the number of single parents in the  
3 workforce has grown. The need for partial wage replacement for  
4 workers taking family care leave will be exacerbated as the  
5 population of those needing care, both children and parents of  
6 workers, increases in relation to the number of working age adults.

7 (b) Family Temporary Disability Insurance shall be known as  
8 Paid Family Leave.

9 (c) Developing systems that help families adapt to the competing  
10 interests of work and home not only benefits workers, but also  
11 benefits employers by increasing worker productivity and reducing  
12 employee turnover.

13 (d) The federal Family and Medical Leave Act (FMLA) and  
14 California's Family Rights Act (CFRA) entitle eligible employees  
15 working for covered employers to take unpaid, job-protected leave  
16 for up to 12 workweeks in a 12-month period. Under the FMLA  
17 and the CFRA, unpaid leave may be taken for the birth, adoption,  
18 or foster placement of a new child; to care for a seriously ill child,  
19 parent, or spouse; or for the employee's own serious health  
20 condition. *Under the CFRA, unpaid leave may be taken to care*  
21 *for a seriously ill domestic partner.*

22 (e) State disability insurance benefits currently provide wage  
23 replacement for workers who need time off due to their own  
24 non-work-related injuries, illnesses, or conditions, including  
25 pregnancy, that prevent them from working, but do not cover leave  
26 to care for a sick or injured child, spouse, parent, *grandparent,*  
27 *grandchild, sibling, or* domestic partner, or leave to bond with a  
28 new child.

29 (f) The majority of workers in this state are unable to take family  
30 care leave because they are unable to afford leave without pay.  
31 When workers do not receive some form of wage replacement  
32 during family care leave, families suffer from the worker's loss of  
33 income, increasing the demand on the state unemployment  
34 insurance system and dependence on the state's welfare system.

35 (g) It is the intent of the Legislature to create a family temporary  
36 disability insurance program to help reconcile the demands of work  
37 and family. The family temporary disability insurance program  
38 shall be a component of the state's unemployment compensation  
39 disability insurance program, shall be funded through employee  
40 contributions, and shall be administered in accordance with the

1 policies of the state disability insurance program created pursuant  
2 to this part. Initial and ongoing administrative costs associated  
3 with the family temporary disability insurance program shall be  
4 payable from the Disability Fund.

5 SEC. 3. Section 3301 of the Unemployment Insurance Code  
6 is amended to read:

7 3301. (a) (1) The purpose of this chapter is to establish, within  
8 the state disability insurance program, a family temporary disability  
9 insurance program. Family temporary disability insurance shall  
10 provide up to six weeks of wage replacement benefits to workers  
11 who take time off work to care for a seriously ill child, spouse,  
12 parent, *grandparent, grandchild, sibling, or* domestic partner, or  
13 to bond with a minor child within one year of the birth or placement  
14 of the child in connection with foster care or adoption.

15 (2) Nothing in this chapter shall be construed to abridge the  
16 rights and responsibilities conveyed under the CFRA or pregnancy  
17 disability leave.

18 (b) An individual's "weekly benefit amount" shall be the amount  
19 provided in Section 2655. An individual is eligible to receive  
20 family temporary disability insurance benefits equal to one-seventh  
21 of his or her weekly benefit amount for each full day during which  
22 he or she is unable to work due to caring for a seriously ill or  
23 injured family member or bonding with a minor child within one  
24 year of the birth or placement of the child in connection with foster  
25 care or adoption.

26 (c) The maximum amount payable to an individual during any  
27 disability benefit period for family temporary disability insurance  
28 shall be six times his or her "weekly benefit amount," but in no  
29 case shall the total amount of benefits payable be more than the  
30 total wages paid to the individual during his or her disability base  
31 period. If the benefit is not a multiple of one dollar (\$1), it shall  
32 be computed to the next higher multiple of one dollar (\$1).

33 (d) No more than six weeks of family temporary disability  
34 insurance benefits shall be paid within any 12-month period.

35 (e) An individual shall file a claim for family temporary  
36 disability insurance benefits not later than the 41st consecutive  
37 day following the first compensable day with respect to which the  
38 claim is made for benefits, which time shall be extended by the  
39 department upon a showing of good cause. If a first claim is not  
40 complete, the claim form shall be returned to the claimant for

1 completion and it shall be completed and returned not later than  
2 the 10th consecutive day after the date it was mailed by the  
3 department to the claimant, except that such time shall be extended  
4 by the department upon a showing of good cause.

5 SEC. 4. Section 3302 of the Unemployment Insurance Code  
6 is amended to read:

7 3302. For purposes of this part:

8 (a) “Care recipient” means the family member who is receiving  
9 care for a serious health condition or the new child with whom the  
10 care provider is bonding.

11 (b) “Care provider” means the family member who is providing  
12 the required care for a serious health condition or the family  
13 member who is bonding with the new child.

14 (c) “Child” means a biological, adopted, or foster son or  
15 daughter, a stepson or stepdaughter, a legal ward, a son or daughter  
16 of a domestic partner, or the person to whom the employee stands  
17 in loco parentis.

18 (d) “Domestic partner” has the same meaning as defined in  
19 Section 297 of the Family Code.

20 (e) “Family care leave” means any of the following:

21 (1) Leave to bond with a minor child within the first year of the  
22 child’s birth or placement in connection with foster care or  
23 adoption.

24 (2) Leave to care for a child, parent, *grandparent*, *grandchild*,  
25 *sibling*, spouse, or domestic partner who has a serious health  
26 condition.

27 (f) “Family member” means child, parent, *grandparent*,  
28 *grandchild*, *sibling*, spouse, or domestic partner as defined in this  
29 section.

30 (g) “Parent” means a biological, foster, or adoptive parent, *a*  
31 *parent-in-law*, a stepparent, a legal guardian, or other person who  
32 stood in loco parentis to the employee when the employee was a  
33 child.

34 (h) “Serious health condition” means an illness, injury,  
35 impairment, or physical or mental condition that involves inpatient  
36 care in a hospital, hospice, or residential health care facility, or  
37 continuing treatment or continuing supervision by a health care  
38 provider, as defined in Section 12945.2 of the Government Code.

39 (i) “Spouse” means a partner to a lawful marriage.

(j) “Valid claim” means any claim for family temporary disability insurance benefits made in accordance with the provisions of this code, and any rules and regulations adopted thereunder, if the individual claiming benefits is unemployed and has been paid the necessary wages in employment for employers to qualify for benefits under Section 2652 and is caring for a seriously ill family member, or bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption.

(k) “Twelve-month period,” with respect to any individual, means the 365 consecutive days that begin with the first day the individual first establishes a valid claim for family temporary disability benefits.

SEC. 5. Section 3303 of the Unemployment Insurance Code is amended to read:

3303. An individual shall be deemed eligible for family temporary disability insurance benefits equal to one-seventh of his or her weekly benefit amount on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption or caring for a seriously ill child, parent, *grandparent*, *grandchild*, *sibling*, spouse, or domestic partner, only if the director finds all of the following:

(a) The individual has made a claim for temporary disability benefits as required by authorized regulations.

(b) The individual has been unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable.

(c) The individual has filed a certificate, as required by Sections 2708 and 2709.

SEC. 6. Section 3303.1 of the Unemployment Insurance Code is amended to read:

3303.1. (a) An individual is not eligible for family temporary disability insurance benefits with respect to any day that any of the following apply:

(1) The individual has received, or is entitled to receive, unemployment compensation benefits under Part 1 (commencing



1 with Section 100) or under an unemployment compensation act  
2 of any other state or of the federal government.

3 (2) The individual has received, or is entitled to receive, “other  
4 benefits” in the form of cash benefits as defined in Section 2629.

5 (3) The individual has received, or is entitled to receive, state  
6 disability insurance benefits under Part 2 (commencing with  
7 Section 2601) or under a disability insurance act of any other state.

8 (4) Another family member, as defined in Section 3302, is ready,  
9 willing, and able and available for the same period of time in a  
10 day that the individual is providing the required care.

11 (b) An individual who is entitled to leave under the FMLA and  
12 the CFRA must take Family Temporary Disability Insurance  
13 (FTDI) leave concurrent with leave taken under the FMLA and  
14 the CFRA, *if the FTDI leave is a qualifying leave under the FMLA*  
15 *or CFRA*.

16 (c) As a condition of an employee’s initial receipt of family  
17 temporary disability insurance benefits during any 12-month period  
18 in which an employee is eligible for these benefits, an employer  
19 may require an employee to take up to two weeks of earned but  
20 unused vacation leave prior to the employee’s initial receipt of  
21 these benefits. If an employer so requires an employee to take  
22 vacation leave, that portion of the vacation leave that does not  
23 exceed one week shall be applied to the waiting period required  
24 under subdivision (b) of Section 3303. This subdivision may not  
25 be construed in a manner that relieves an employer of any duty of  
26 collective bargaining the employer may have with respect to the  
27 subject matter of this subdivision.